

Memorandum



Mr. Rudy Bischof, MIC:64

Date: March 27, 1998

From : Dan Nauman
Tax Counsel

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Subject: California Vessels in Foreign Waters

DEPUTY DIRECTOR
PROPERTY TAXES

In a Memorandum dated December 24, 1997 to Mr. Lawrence A. Augusta, Mr. Charles Knudsen, then with Policy, Planning and Standards, asked for our opinion concerning the above subject. The issue generally presented is how do we treat vessels for property tax purposes when they are documented in California to California owners, but the owners claim that the vessel has been relocated, under various scenarios, to a foreign country. We are directing our response to you as we believe this to be a Policy, Planning and Standards Division issue.

Specifically, Mr. Knudsen included three "Proposed Staff Positions," which are repeated below.¹ As will be discussed in more detail below, while correct much of the time, Proposed Staff Position 1 is incomplete in that it does not reflect the constitutional nexus overlay that, notwithstanding documentation, a vessel with an actual situs outside of California would be taxable in the jurisdiction of the situs, and not in California. Similarly, Proposed Staff Position 2, basically a restatement of Section 1138, is accurate,

¹ Proposed Staff Position

1. If the vessel owner remains a California resident and the vessel continues to be documented in California, the vessel will continue to be taxable in this state regardless of any alleged relocation to another state or country.
2. If the vessel discontinues to be documented in California but the owner continues to be a resident, the vessel will continue to be taxable in California as long as it continues to ply, in whole or in part, the waters of this state, regardless of any documentation or proof of taxes paid to another state or country. (Section 1138. Also see Robert Keeling's October 9, 1984 letter to Mr. R. Gordon Young.)
3. If the vessel discontinues to be documented in California and is removed from California but the owner continues to be a resident, the vessel will continue to be taxable in California unless the owner provides evidence *satisfactory to the assessor* that the vessel has *acquired situs* elsewhere. Satisfactory evidence would include such things as documentation by another jurisdiction or a tax bill (the assessor may want to contact the other jurisdiction to ensure that the tax bill was paid and has not been canceled).

except to the extent that foreign documentation may reflect the acquisition of an actual tax situs in the location of documentation. Section 1138 essentially uses "plying in whole or in part in its waters" as a proxy for failure to establish an actual situs in another jurisdiction. Proposed Staff Position 3 is an accurate statement of the law, whether the vessel is documented in California or not. To be more accurate and helpful, it may be appropriate to include a definition or description of "acquired situs elsewhere."

BACKGROUND

By way of background, historically, the property tax situs for vessels was determined by what is known as the "Home Port Doctrine." This rule provides that a vessel is registered or "documented" in its home port, which is the port closest to the residence of the vessel's owner, or that of the vessel's managing owner or "husband". Only the taxing jurisdiction which contains the vessel's home port could tax the vessel. The fact that the vessel visited or spent time in other jurisdictions, or was in another jurisdiction on a lien or tax date, did not subject the vessel to taxation in a place other than in its home port. The vessel was deemed to be situated in the home port, "the port to which she belongs, and which constitutes her legal abiding place or residence." on the lien date. This is so even if the vessel had *never* visited the home port. *Olson v. San Francisco* (1905) 148 Cal. 80; *California Shipping Co. v City and County of San Francisco* (1907) 150 Cal. 145.

There is a practical exception to the above rule of property tax situs, which is constitutional in dimension. That is, if by the manner of the use of the vessel, the vessel has acquired an *actual* situs other than at its home port, the actual situs created by the owner's use of the vessel will be respected. At that point, the taxing jurisdiction in which the vessel is actually sited, and not the home port, would have jurisdiction to tax.² This would occur, for example, if the owner ceased using a vessel in foreign or interstate commerce and, instead, used the vessel only "indefinitely and exclusively" within one jurisdiction; or permanently moved the vessel's location to another jurisdiction where it gained the "opportunities, benefits or protection afforded" by that other jurisdiction and, so, should properly be subject to taxation there. *Olson, supra*; *Sayles v. County of Los Angeles* (1943) 59 Cal.App.2d 295; *County of Los Angeles v. Lafayette Steel Co.* (1985) 164 Cal.App.3d 690. See also *Smith-Rice Heavy Lifts, Inc. v. County of Los Angeles* (1967) 256 Cal.App.2d 190, 200 ("Generally speaking, the right to tax is founded upon the concept that 'it is in return for the benefit received by the person who pays it or by the property assessed.'"). This has been characterized as a due process issue, involving

² There is some question whether the "home port doctrine" continues to survive. *GeoMetrics v. County of Santa Clara* (1982) 127 Cal.App3d 940, 947. Thus, it is possible that, at least in the commerce context, at some point the historical rules may be replaced with a system, such as the apportionment system applicable to aircraft. This could abandon the "all or nothing" aspect of the Home Port Doctrine and allow partial taxation of a property based upon the amount of contact the property has with this State. It is not clear how this would apply to non-commercial vessels. Obviously, to the extent that it is established that a vessel has no further contact with California, the result would be the same as the historical home port approach.

"sufficient contact" or nexus between the taxing jurisdiction and the vessel. See *County of Los Angeles v. Lafayette Steel Co.*, *supra* at 693.

Thus, until such time as a situs has been established elsewhere, a vessel documented in California continues to be taxable in California. That is, if the vessel is not in California but is traveling from one place to another and has not permanently become attached to one place, situs has not been established elsewhere, and, therefore, continues to exist in California. However, if it is established that situs *has* been acquired elsewhere, then the vessel is no longer taxable in California, whether or not it is still (probably improperly) documented in California and whether or not its owners reside in California.

California statutory law applies "substantially the same rule . . . as between different counties in this state." *Sayles v. County of Los Angeles* (1943) 59 Cal.App.2d 295, 300. First, however, it is appropriate to review how the California statutory law treats the assessment of vessels owned by California residents but which are *documented* outside the State. The starting place for determining a vessel's property tax situs in this situation is Revenue and Taxation Code Section 1138:

"Vessels documented outside of this State and plying in whole or in part in its waters, the owners of which reside in this State, shall be assessed in this State."

For purposes of property taxation, "documented vessel" means "any vessel which is required to have and does have a valid marine document issued by the Bureau of Customs of the United States or any federal agency successor thereto, except documented yachts of the United States, or is registered with, or licensed by, the Department of Motor Vehicles." Rev. & Tax. Code § 130.

Section 1138 is consistent with the Home Port Doctrine, as far as it goes. That is, vessels owned by California residents, especially those which are plying in (or regularly traveling to) California waters, are presumed to be sited in California. If they are plying in California waters, presumably, they are traveling about and have not established a permanent actual situs elsewhere. However, taken a step further, *if* the fact that a vessel is documented elsewhere reflects the *fact* that an actual situs *has* been established elsewhere, the constitutional concerns noted above would come into play and the vessel would properly be taxable only in the jurisdiction of actual situs, Section 1138 notwithstanding.

As was noted above, within the State, the tax situs of vessels is treated similarly to the Home Port Doctrine. Revenue and Taxation Code Sections 1139 and 1140, combined and summarized, provide that taxable vessels are to be assessed in the county where documented, unless the owner elects to have the vessel assessed where it is habitually moored:

§1139. Except as otherwise provided in this article, when the owner or master of a taxable vessel gives written notice of its habitual place of mooring when not in service to the assessor of the county where the vessel is documented, the vessel shall be assessed only in the county where habitually moored.

§1140. Vessels, except ferryboats, regularly engaged in transporting passengers or cargo between two or more ports and vessels concerning which notice of habitual place of mooring has not been given shall be assessed only in the county where documented.

As with the Home Port Doctrine, within California, vessels are normally documented at the address of the owner, or where normally stored. See Vehicle Code §§ 9850 *et seq.* Sections 1139 and 1140 were intended to establish as between counties, an artificial tax situs analogous to the home port rule for vessels moving between counties. As with the home port doctrine, which does not apply when a vessel acquires an actual situs. Sections 1139 and 1140 are inapplicable where a vessel is permanently located in one county. In that situation, Article XIII, section 10 (now section 14) of the California Constitution and Revenue and Taxation Code section 404, both to the effect that all property shall be assessed in the county in which it is situated, require that the vessel be taxed in the county in which it has acquired a permanent situs. *Smith-Rice Heavy Lifts, Inc. v. County of Los Angeles* (1967) 256 Cal.App.2d 190.

ANALYSIS

Applying the above background to the Proposed Staff Positions, it is clear that Position 1 is incomplete in that it does not recognize the principal, established in both the Home Port Doctrine and in California case law, that, notwithstanding documentation, the residence of the owner, or other factors, if a vessel has been permanently relocated to another state or country, jurisdiction to tax that vessel has also been relocated. It may be that continued registration in California is inappropriate in such circumstances. However, that would not eliminate the constitutional limitations on the State's ability to tax.

It should be noted, the above notwithstanding, that once a taxpayer registers a vessel indicating a California situs, the assessor may rely on such information unless and until proof has been established of the vessel having acquired situs elsewhere. The burden of establishing this fact is on the taxpayer.

As is noted above, Proposed Staff Position 2 is essentially a restatement of Section 1138, and accurately states the law as far as it goes. It is one way to state the rule staff have restated in Proposed Staff Position 3, and as summarized above, that a vessel is taxable where its owner resides, unless it acquires permanent situs elsewhere. The statute

presumes that, if a vessel owned here is plying the waters of this state, it has not established a permanent tax situs somewhere else.

Finally, Proposed Staff Position 3 is an accurate statement of the law, whether the vessel is documented in California or not. However, the examples of satisfactory evidence set forth there would not, of course, be exclusive. Any evidence, including the declaration of the taxpayer or other witnesses, which is credible and believed by the assessor or a court, could be sufficient to establish the ultimate fact of permanent relocation.

OTHER QUESTIONS

Mr. Knudsen's Memo also notes that some statutes utilize the criteria of residency, while some cases and opinions use domicile, and he raises the question to which should we look in the analysis of a vessel's property tax situs.

The following quotation from Bancroft Whitney's "California Words, Phrases and Maxims," summarizing the holding of the Supreme Court in *Smith v. Smith* (1955) 45 Cal.2d 235, aptly states the law in this regard:

Courts and legal writers usually distinguish "domicile" and "residence," so that "domicile" is the one location with which for legal purposes a person is considered to have the most settled and permanent connection, the place where he intends to remain and to which, whenever he is absent, he has the intention of returning, but which the law may also assign to him constructively, whereas "residence" connotes any factual place of abode of some permanency, more than a mere temporary sojourn. "Domicile" normally is the more comprehensive term, in that it includes both the act of residence and intention to remain. A person may have only one domicile at a given time, but he may have more than one physical residence separate from his domicile, and at the same time. But statutes do not always make this distinction in the employment of the words. They frequently use "residence" and "resident" in the legal meaning of "domicile" and "domiciliary," and at other times in the meaning of factual residence, or in still other shades of meaning.

Also, from the same source, summarizing *Dunsmuir Estate* (1905) 2 Cof 53:

Although it has been stated that "residence" means one thing under the attachment laws, another under the voting laws, and still another under the venue laws, generally speaking, as used in the statutes, it means "domicile."

Thus, for purposes of property tax situs, in virtually every case, "residence" and "domicile" will be interchangeable. They both connote a factual residence with a present intention of permanence.

I believe that all of the other questions raised in Mr. Knudsen's Memo and the attached letter from the Ventura County Assessor's Office are addressed in the above discussion. Of course, if you wish to discuss this further, if you have additional questions, or if I can be of any further assistance, please do not hesitate to call me.

Finally, the draft of AH 571 currently being prepared includes pages on vessels and situs of documented vessels. Perhaps a copy of this memorandum should be provided to those doing the AH 571 drafting.

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